Public Prosecutor v Goh Ah Lim

HIGH COURT (SINGAPORE) - CRIMINAL CASE NO 6 OF 1988
LAI KEW CHAI AND CHUA JJ
24 AUGUST 1989

Criminal Law - Dangerous drugs - Trafficking in and exporting - Whether accused knew what he was carrying - Question of fact - Misuse of Drugs Act (Cap 185, 1985 Ed), ss 5(a), 7 & 12 - Criminal Procedure Code (Cap 68, 1985 Ed), s 122(6)

Criminal Procedure - Statement made to investigating officer - Failure of accused to mention fact in his defence - Effect of failure

The accused was arrested at Changi International Airport as he was waiting to board a flight for Australia, with packets of diamorphine concealed under his clothes. He admitted to a police officer that he was carrying drugs. At the trial, the accused claimed that he did not know what was in the packets and that he was carrying the drugs on behalf of another person, Yeo, who had told him that he was carrying Chinese medicine. The accused asked Yeo whether it was dangerous or an offence to carry 'that thing'. The accused said that Yeo told him that it was not an offence in Singapore but that it would be taxed in Australia. The accused also denied telling the police officer that he was carrying drugs. He was charged with attempting to export 1,269.8g of diamorphine from Singapore contrary to s 7 read with s 12 of the Misuse of Drugs Act (Cap 185, 1985 Ed). In the alternative, he was charged with trafficking in the same quantity of diamorphine contrary to s 5(a) of the same Act.

Held, convicting the accused:

(1) The sole question of fact here turned on the knowledge of the accused. It was whether he knew he was carrying heroin or whether he believed, as he claimed, that he was merely carrying Chinese medicine to Australia.

(2) Having considered the entire evidence, the court was left in no doubt that he knew he was carrying heroin. The court also found that he had told a police officer that he was carrying drugs to Australia.

(3) The accused had also failed to mention in his s 121(6) (now s 122(6)) statement of the Criminal Procedure Code the fact that he believed that he was carrying Chinese medicine. The story that he was carrying the packets merely to evade tax was quite incredible.

(4) The accused was accordingly convicted for attempting to export to Australia the diamorphine in the quantity as charged contrary to s 7 read with s 12 of the Misuse of Drugs Act. The alternative charge was stood down. The accused was sentenced to death.

[*Editorial Note*: The accused has appealed to the Court of Criminal Appeal vide Criminal Appeal No 7 of 1989.]

Legislation referred to
Criminal Procedure Code (Cap 68, 1985 Ed) s 122(6)
Misuse of Drugs Act (Cap 185, 1985 Ed) ss 5(a), 7, 12

Lee Sing Lit for the Public Prosecutor.
Lee Ah Fong for the accused.

Cur Adv Vult

Lai Kew Chai J (delivering the judgment of the court): The accused, a male Chinese aged 46, faced in the alternative two capital charges under the Misuse of Drugs Act (Cap 185, 1985 Ed) ('the Act'). The prosecution preferred the two charges in the alternative under s 172 of the CPC. The first charge stated that at about 5pm on 20 December 1986 at departure gate D63 of the Changi International Airport he did attempt to export from Singapore 1,269.8g of diamorphine contrary to s 7 read with s 12 of the Act. The alternative charge stated that between 5am and 5pm on the same day, he did traffick in the same quantity of diamorphine contrary to s 5(a) of the Act.

The evidence led by the prosecution was as follows. At about 5pm on 20 December 1986 PC Zainudin bin Jamal was performing anti-hijack body frisking duty at the said departure room on passengers who were shortly due to emplane on British Airways flight BA 11 for Australia. The plane was due to depart at 5.40pm. He saw the accused approach the boarding room. He saw him carrying a duty-free bag containing a bottle of Martell and a carton of Dunhill cigarettes. He stopped the accused for a routine search. He frisked the accused and found that the waist band of the accused's trousers and both his thighs were bulging. He then questioned the accused about the contents in the bulges. The accused replied 'nothing'. He noticed that his face suddenly turned pale and he looked nervous. He questioned him again and the accused again replied 'nothing'. PC Zainudin then tapped at the bulging waist-band and noticed some whitish powdery substance appearing on the surface. When he approached the accused, he had a strange smell. It was not body odour. Suspecting that the substance was something illegal, he detained the accused. He seized his passport, identity card, air ticket and his boarding pass. He informed his colleagues of the matter. The party went to the airport police station. He lodged a police report. He continued to assist in the investigation and with other officers accompanied the accused to CNB where they arrived at 8.15pm.

In cross-examination, it was put to him that the accused had replied 'Chinese medicine' when he first asked the accused about the contents. He maintained that the accused said it was 'nothing' to his first two questions about the contents. He also did not agree that the accused's paleness could be due to his fairness of complexion. He said that and demonstrated in court how the accused had blinked nervously. He said it appeared that the accused did not know what to do. He agreed there was no other strange behaviour.

Sgt John Cheong Ging Thow arrived at Holding Room D63 at about 5.25pm. He was briefed by the police officers. He saw the accused and approached him. He checked his waist band and touched it. It was soft. He then recited his questioning and the answers of the accused. Counsel did not challenge the voluntary nature of the

answers of the accused. Sgt John Cheong said he asked the accused what the contents were. The accused kept quiet. He asked him again in English, to which the accused replied: 'drugs'. He said the accused pointed to the bags in his thighs. Sgt Cheong then asked him who had asked him to carry the drugs and the accused replied that it was an Australian by the name 'John'. Sgt John Cheong said that he recorded the conversation in his pocket diary, which he read in court and which counsel for the defence examined. He said he recorded thus: 'On questioning him the male Chinese admitted he is carrying drugs for one Australian named John.' The sergeant stated in evidence that he did not tell IO Chew Khai Chow about this conversation and that was the reason why he did not mention this conversation in his statement at the preliminary inquiry. Sgt John Cheong also said in evidence that he asked the accused if he knew the punishment for carrying drugs. At first the accused kept quiet. He then asked him if he knew the sentence or not. The accused then said: 'Hang'. In cross-examination, Sgt John Cheong denied defence suggestion that the accused had said that he was told that he was carrying Chinese medicine.

The police officers then escorted the accused to the airport police station. From there he was escorted to the Central Narcotics Bureau where he was handed over to Narcotics Officer Chew Khai Chow. The accused was still strapped with the bulges at his waist-band and at his thighs. At about 9.15pm IO Chew Khai Chow arranged for the accused to be photographed. The photographs produced in court showed bags of powdery substances strapped round his waist-band and round his thighs with thigh guards. We need to refer specifically to the packages strapped round the accused's waist and thighs. IO Chew marked as 'GAL-1' the dark blue long pants with a white cloth containing whitish substance, sewn round the waist-line. He also marked the two white cloth bags tied round the thighs with thigh guards which he marked as 'GAL-2' and 'GAL-3'. Evidence was led to the effect that IO Chew submitted these three exhibits for analysis by principal scientific officer, Dr Chow Shui Tse. Dr Chow Shui Tse stated in evidence that he found that the contents of the three exhibits to be diamorphine with a total nett weight of not less than 1,269.8g. The remains of these three exhibits after analysis were admitted at the trial as exhs P23, P24 and P25. He was not cross-examined by the defence.

IO Chew said he took a then s 121(6) CPC statement from the accused between 12.20am and 1.30am on 21 December 1986. As the voluntariness of the statement was accepted by the defence, we admitted the statement by which the accused stated as follows:

> I know one Roland Yeo Thiam Kwee for about ten years. About a year ago, Roland Yeo introduced me to an Australian called John. I used to borrow money from Roland Yeo and John for my two daughters' medical expenses at Singapore Nursing Home, No 19, Adam Road. About three months ago, Roland Yeo asked me whether I dare to make big money. He also insulted me that he had only one leg but has more guts than me. He told me further that if I were interested in making big money, John will tell me the details. About a month ago, Roland Yeo, John and me met at the Parklane Coffee House. At the coffee house, Roland Yeo used a measuring tape to measure the size of my long pants. After this meeting, I met either Roland Yeo or John at Parklane Coffee House or at the Kentucky Restaurant at Kampong Java Road. It was Roland Yeo who asked me to bring something from Singapore to Australia and someone will pay me when he received the thing. Roland Yeo and John never told me what was the thing I was supposed to carry. I asked the two of them what was this thing but the two of them assured me not to worry. On 19 December 86 at about 11pm Roland Yeo telephoned me and asked me to meet him at the food centre at Race Course Road at 5am on 20 December 86. At the appointed date and place, I met Roland Yeo and another Australian called Joe. Roland Yeo then gave me a pair of long pants and Joe went with me to a public toilet in the food centre. While in the toilet, Joe placed a white cloth packet on my right thigh and he secured the packet with two thigh guards. After that, he secured another packet on my left thigh. When Joe finished this, I put on the long pants given to me by Roland Yeo. I did not know what was the contents in the packets. Both of us then came out from the toilet and met Roland Yeo who then gave me A$342 and S$204 as my travelling expenses. I then asked Roland Yeo that this money was not the amount he had promised as he had previously promised to pay me S$2,000. Roland Yeo on hearing my protest, assured me that when I arrived at Australia someone will pay me. After this, the three of us then went to the Parklane Coffee House where Roland Yeo gave me the plane ticket to Australia. At about 10am, Joe and Roland Yeo left the coffee house. I remained in the coffee house until 12 noon and then I took a taxi to Changi Airport. At about 5pm while I was in the boarding room, I was searched by a Malay police officer and detained by him.

The 'Roland Yeo' referred to by the accused was one Yeo Thian Kwee who was arrested by CNB officers on 21 December 1986. He gave evidence, after which he was cross-examined. It was put to him that he master-minded the whole transaction, that he arranged for the concealment of what he said were Chinese herbs for which very high import tax was payable in Australia, that he and one Joe, a white Australian, had met the accused at the Race Course Food Centre at about 5am on 20 December 1986, that they strapped him and concealed the substance in the public toilet there and that he had pre-arranged his alibis to escape any involvement. It was also put to him that he had taught his wife to perjure herself by saying that he was at home in the morning of 20 December 1986. Yeo denied all these suggestions.

Yeo Thian Kwee, in evidence, said he had known the accused for about ten years. He came to know the accused when he was a salesman of electronic goods. They used to visit bars and lounge for drinks. The last time they had drinks together was in November 1986. He firmly stated that since November 1986 he had not met the accused till his arrest by CNB officers on 21 December 1986. He said

the accused, who used to borrow money from him, owed him $40 to $50. He gave evidence of his movements and what he did on 19 and 20 December 1986. He said that on 19 December 1986 he left home at about 9.30am. He took a taxi to a friend's office at Bukit Merah Central. At that office he met his other friends known as Bala alias Seow Kian Chew and one Phua. Yeo said he remained in that office till 3 to 4pm. After that he went to the coffee shop below the office for drinks with his friends known as Ng, Khoo and Wee. They all remained in the coffee shop till 7pm after which he left for home, arriving there at about 8pm. He said he never left home until the next day.

On the following day, he said he had breakfast at home. His mistress left home at about 10am for work. He left home at about 12pm, taking a bus to the Jurong Bus Interchange where he took another bus for Selegie Road. His friends had arranged the previous day for drinks since this was a Saturday afternoon. He said he arrived at a coffee shop beside the Rex Cinema at about 2pm. There he met his friends Ng and Wee. Another friend known to him as Khoo joined them later. They left the coffee shop at about 5 to 6pm for Petain Road, where at another coffee shop he had two more drinks with his friends. After that he left with his friend Khoo in his station-wagon at about 6.30pm for Bishan Road. At Bishan Road, he collected his young son from his sister-in-law's house. His friend, Khoo, sent them home. He said his friend, Khoo, remained with them until after the Chinese news on television at about 8.30pm. Yeo said he was at home with his young son until his mistress returned home at about 10pm. After that he went to bed. In going about, Yeo used an artificial limb as his right leg had been amputated.

Yeo Thian Kwee's wife, who had just started work in a hotel as a probationary administrative officer, gave evidence which substantially supported Yeo's evidence that on 19 December 1986 he had returned home by about 7pm and had remained in his flat until about 9.30am the following Saturday morning when she left for work. She said she remembered this because it was a Saturday and he did not, as usual, go to work early. She had prepared his breakfast and had woken him up. She had reminded him to fetch their son from their baby-sitter who was her sister-in-law. Whereas the accused in his statement alleged that Yeo Thian Kwee was miles away from home at Race Course Road at about 5am on 20 December 1986, Yeo's wife confirmed that Yeo was at home and had spent the night there waking up only at about 9am. In her statement to IO Chew on 6 January 1987 and at the preliminary inquiry, she had claimed that Yeo Thian Kwee was at home with her on 19 December 1986 up to 4pm. She amended this in her evidence before us. She said she really did not know the exact time he had left home on the morning of 19 December 1986. She claimed she was very confused when she made the statement. However, she maintained that what she said about the presence of the accused on the Saturday morning of 20 December 1986 was correct.

Seow Kian Chiew, a trader who was also known as 'Bala' to his friends, said he had been a friend of Yeo Thian Kwee's since 1979. On 19 December 1986 at about 11am he went to the office of Soon Heng Industrial Company at the Bukit Merah Centre. There he met Yeo Thian Kwee, a Mr Ng, a Mr Phua and a Mr Wee. The company was run by a Mr Foo, a friend of Phua. He identified Yeo, Phua and Ng in court. He said he had not seen Mr Wee after that day. At about 2pm Yeo Thian Kwee and Wee left the office but they returned to the office at about 5pm where they remained until 6pm. Shortly thereafter, he went with Yeo Thian Kwee, Phua, Wee and Ng to a coffee shop below the office and had coffee for about half an hour. Seow said he and Phua left, after which he never met Yeo Thian Kwee again.

Seow said he had known the accused since 1978 when he met him in a car dealer's shop. He last saw him in 1985 after which he had no further contact with the accused.

Phua Keng Swee, the sole proprietor of a paint shop when he gave evidence, said that he had worked as a salesman in Soon Heng Industrial Company, a garment factory, for less than two months from December 1986. By 19 December 1986 he had seen Yeo Thian Kwee four or five times. He said that on 19 December 1986 he went to work and at the office he saw Yeo Thian Kwee, Wee and Ng. He identified Ng as Ng Ching Yong but he said he had not seen Wee since that day. He left work for home that day at about 5pm with 'Bala'. He did not pay attention if Yeo Thian Kwee was in the office the whole day. He did not know the accused.

Yeo Thian Kwee's movements on Friday, 19 December 1986, between 2 and 3pm and 7pm and Saturday, 20 December 1986, from about 2pm and 8.30pm were confirmed by Siah Gim Huat, also known as 'Khoo', a friend of Yeo Thian Kwee. He was in the export and import business. His evidence confirmed that he was with Yeo Thian Kwee on 19 December 1986 between the hours stated. He also said they had drinks together the following afternoon and was in the company of Yeo Thian Kwee until he left him at his flat after the television Chinese news at about 8.30pm.

Ng Ching Yong, an estate agent, gave evidence that he spent part of the afternoon and evening of 19 December 1986 in the company of Yeo Thian Kwee and had drinks with him the following Saturday afternoon in a coffee shop near the Rex cinema.

Counsel for the accused in the course of the cross-examination of Yeo Thian Kwee also put to him that he had given the accused A$342 and S$204 as travelling expenses at the Race Course Food Centre public toilet and had assured the accused that he would be paid A$10,000

in Australia, failing which Yeo Thian Kwee would himself pay him. Yeo denied these suggestions. It was also put to Yeo that from the Race Course Food Centre, after he had put on the trousers and a coat, all three of them went to the Hyde Park Cafe, where Yeo handed him the passport and the air ticket. Defence counsel also suggested that from the Hyde Park Cafe, Yeo and Joe took him to see a doctor at the Tokyo Dispensary, after which they returned to the Hyde Park Cafe. It was also part of the defence case that Yeo and Joe left the cafe at about 11am and that before leaving, Yeo had told him to wait at the cafe until about 1pm when a friend of Yeo's would take him to the airport to take the BA flight that afternoon.

With regard to these visits to the Hyde Park Cafe on 20 December 1986, prosecution led the evidence of Hoong Bee Huay who was working as a cashier-cum-supervisor at the cafe, which was her father's restaurant. She had worked at the cafe from 1984 until April 1987. She said that the accused and Yeo Thian Kwee, both of whom she identified, had patronized her cafe. But she said that the last time they or either of them patronized her cafe was in early November 1986. She was positive that neither the accused nor Yeo Thian Kwee had patronized her cafe on either 19 or 20 December 1986. She confirmed that on 20 December 1986 from 10am to 10pm she had remained throughout in the cafe. She took her lunch at the cafe. She did not see the accused nor Yeo Thian Kwee. In cross-examination, she denied that the accused had come to the cafe with a white Australian at about 10am on 20 December 1986. She also denied that Yeo and the Australian had left at about 11am and that the accused left the cafe at about 1pm.

At the close of the case for the prosecution, the defence did not make any submission. We were of the view that prosecution had made out a prima facie case which, if unrebutted, would warrant a conviction of the charges in the alternative and we called upon the accused to enter upon his defence. We administered the usual allocution. The accused elected to give evidence on oath.

The accused said that he had been a taxi driver for 22 years. He had known Yeo Thian Kwee for about ten years before his arrest. They had gone out frequently for drinks. He has two daughters, Goh Siew Yong and Goh Siew Mei who were aged 25 and 23 at the time of his arrest. They were suffering from mental illnesses and were treated. He used to borrow money from Yeo Thian Kwee to pay for the medical expenses. Yeo had introduced to him two whites known as John and Joe whom he was told were Australians.

About three months before his arrest, the accused was offered by Yeo Thian Kwee in the presence of John an opportunity to make big money by carrying something to Australia. He wanted to know more and was told by Yeo Thian Kwee not to worry but to wait for his instructions. He trusted Yeo Thian Kwee. On 1 December 1986 Yeo Thian Kwee got him to sign the application form for the visa and took away his passport. At about 11am on 19 December 1986 he went to Hyde Park Cafe, as arranged by Yeo Thian Kwee, and collected from him the nylon travelling bag, exh P34. Yeo told him to wait for further instructions. At about 11pm that night, Yeo told him that he was going to Australia and instructed him to meet him at the Race Course Food Centre at 5am the following Saturday morning. He went there at the appointed time and met both Yeo Thian Kwee and Joe, the other white Australian. Yeo had a plastic bag which contained a pair of long trousers with two packets sewn round the waist band, Yeo having earlier taken his measurements for the trousers. The accused also saw two other packets and a jacket. He asked both Yeo Thian Kwee and Joe whether the thing he was about to carry was illegal and Yeo told him that it was Chinese medicine. He then went into the public toilet at the food centre with Joe who helped to strap the two packets onto his thighs and he put on the trousers. He came out of the toilet and Yeo gave him the jacket to put on. Yeo also gave him A$342 and $204 for his expenses.

The accused, though believing the contents to be Chinese medicine, again questioned Yeo if it was dangerous or an offence for him to carry that thing. The accused said that Yeo Thian Kwee told him that it was not an offence in Singapore but it would be taxed in Australia. Yeo also said that he would be met on arrival by someone who would be carrying a cardboard bearing his name. Yeo Thian Kwee also promised the accused would be paid A$10,000 in Australia and that Yeo would pay him if he was not paid in Australia.

The three of them went to the Hyde Park Cafe at about 10am. He carried his travelling bag with him. They left it in the cafe and they took him to consult a doctor for his treatment of his aches and pains. After that they returned to the cafe. At about 11am both Yeo and Joe left, and the accused was told a friend of Yeo's would take him to the airport from the cafe at about 1pm. At about 1pm Yeo's friend came in a Honda car and drove him to the airport.

At the departure Passenger Holding Room D63, he was frisked by PC Zainudin and was detained. When asked at first, he first told the police constable 'Nothing' but later he told him it was Chinese medicine which John had arranged for him to carry to Australia. Later, to Sgt John Cheong, the accused said he told him it was Chinese medicine and that it was John who arranged for him to carry it to Australia. As for the contents, he had told the sergeant that he was not sure of the contents. He said the sergeant did not ask him if he knew about the punishment for carrying drugs. He was asked to explain why he did not state that it was John who asked him to carry Chinese medicine in his then s 121(6) CPC statement. He claimed

that he had told IO Chew Khai Chow that it was Chinese medicine and that it was John who arranged for him to carry the packets to Australia. When referred to the evidence of Hoong Bee Huay to the effect that she did not see Yeo Thian Kwee and the accused patronizing the cafe either on 19 or 20 December 1986 the accused suggested that she could be mistaken or that she was quite friendly with Yeo Thian Kwee.

Accordingly, the sole question of fact before us turned on the knowledge of the accused and it was whether he knew he was carrying heroin or whether he believed, as he claimed, that he was merely carrying Chinese medicine to Australia. Having considered the entire evidence, we were left in no doubt that he knew he was carrying heroin. We did not believe him when he claimed that he believed he was merely carrying Chinese medicine. We found that after his arrest he admitted to Sgt John Cheong that he was carrying drugs to Australia and that he was pale and nervous. If he was merely carrying Chinese medicine to Australia he had no reason to be nervous. He also did not mention in his then s 121(6) statement that he believed he was merely carrying Chinese medicine to Australia. In his statement he stated that Yeo Thian Kwee and John never told him 'what was the thing' he was supposed to carry. We did not believe his claim that he had told IO Chew Khai Chow that it was 'John' who arranged for him to carry Chinese medicine to Australia. We found the version of the accused about carrying Chinese medicine to Australia merely to evade tax there quite incredible. We refer to his evidence about the role of Yeo Thian Kwee, particularly the events on the morning of 20 December 1986 at the Race Course Food Centre and their visits to the Hyde Park Cafe. We were convinced he was not telling the truth. In addition to the denial of Yeo Thian Kwee, and the confirmation of Yeo's wife that he was at home that morning, we also accept the evidence of Hoong Bee Huay that the accused, Yeo Thian Kwee and John or any of them did not patronize the Hyde Park Cafe on 20 December 1986 and that the last time the accused and Yeo Thian Kwee patronized the cafe was in November 1986.

Accordingly, we convicted the accused of the offence of attempting to export to Australia the diamorphine in the quantity as charged contrary to s 7 read with s 12 of the Act. We stood down the alternative charge. We sentenced him to death.

Order accordingly.

Solicitors: *Ng Lee & Partners.*

Reported by *Terence Tan Bian Chye*

Louis Vuitton v Lee Thin Tuan

HIGH COURT (SINGAPORE) - SUIT NO 1049 OF 1989
GRIMBERG JC
22 AUGUST 1989

Trade Marks - Infringement of - Interim injunction against person found in possession of infringing items

Civil Procedure - Interim injunction restraining person from infringing trade mark - Order requiring person to set out information concerning receipt and supply of counterfeit items - Order authorizing trade mark owners to store and insure seized counterfeit items

The plaintiffs are registered proprietors of the trade marks 'Louis Vuitton' and 'LV' ('the marks'). They issued a writ against the defendant claiming an injunction against him to restrain him from infringing the marks, and an order for delivery up by the defendant of all goods in the defendant's possession. The plaintiffs also filed a motion claiming an interim injunction to restrain the defendant from infringing the marks, an order requiring him to file an affidavit concerning the receipt and supply of goods bearing the marks, and an order authorizing the plaintiffs to store and insure the articles they had seized from the defendant. The plaintiffs' motion was supported by two affidavits. The first was deposed by private investigators who had attended a search of premises of which the defendant was a joint tenant. The search uncovered a large number of articles bearing the marks. The second affidavit was affirmed by the plaintiffs' store manageress who confirmed that the articles seized were not of the plaintiffs' manufacture. The defendant filed two affidavits in opposition to the plaintiffs' motion. He denied his presence on the premises searched at the time of the search and stated he did not understand the contents of the search warrant shown to him at the search. His second affidavit opposed the granting of an injunction and claimed that the plaintiffs had not shown that they had suffered any damage or that there was a 'likelihood of it recurring'.

Held, granting the orders sought by the plaintiffs:

(1) The fact that the defendant was found in possession of a large quantity of counterfeit goods established, on a balance of probabilities, that he was a supplier of, or a dealer in, the spurious goods. There was thus a serious question to be tried.

(2) The plaintiffs had established a case on the evidence for the orders sought, and it was in the interest of justice that they should be granted prompt relief.

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No 79 of 1989.]

Dedar Singh Gill for the plaintiffs.
S Pillai for the defendant.

Cur Adv Vult

Grimberg JC: The plaintiffs are the registered proprietors of the trade mark 'Louis Vuitton' and 'LV' ('the marks'). They issued a writ against the defendant on 1 June 1989 claiming an injunction to restrain him from infringing the marks, and an order for the delivery up by the defendant of all goods in the defendant's possession, the continued retention and/or use of which would be in breach of the injunction prayed for. An appearance was entered on the defendant's behalf of 7 July. On 2 July, the plaintiffs filed a motion claiming: